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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/923,210	08/06/2001	Christopher Randall Beharry	8195M	8980
24024	7590	11/17/2003	EXAMINER	
CALFEE HALTER & GRISWOLD, LLP 800 SUPERIOR AVENUE SUITE 1400 CLEVELAND, OH 44114			TRAN LIEN, THUY	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 11/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/923,210

Applicant(s)

BEHARRY, CHRISTOPHER
RANDALL

Examiner

Lien T Tran

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 July 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

The 112 second paragraph rejection of claims 4,14 and 21 is hereby withdrawn.

Claims 1-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wong et al (5667838) in view of Brabbs (4596714) and the Jif recipes for the same reason set forth in the previous office action.

In the response filed July 28, 2003, applicant argues none of the references teaches super-stabilized nut spread. Applicant states Wong et al teach regular, not super-stabilized nut spread. While the prior art does not disclose a super-stabilized nut spread, the making of the super-stabilized nut would have been obvious to one skilled in the art. It is known as taught by Wong et al and Brabbs that nut spread contains a stabilizer so that oil separation in the peanut paste does not occur. The amount that is normally used is 1-5%. The stabilizer is added for a specific function. It would have been obvious to one skilled in the art to increase the amount of stabilizer if one wants to further increase the stabilization of the product. The amounts of stabilizer used also affect the hardness of the product. If one wants a soft product, it would have been obvious to use a small amount of stabilizer, or if one wants a harder product, it would have been obvious to use a larger amount of stabilizer. Increasing the amount of ingredient to obtain a specific function would have been obvious to one skilled in the art. For example, it is well known in the art to use starch or gum to increase the viscosity of a food product. It would have been obvious to use more gum or starch if one wants a higher viscosity or to use less gum or starch if one wants low viscosity. The same concept can be used in using stabilizer. Applicant is only using a known ingredient to obtain an expected result. Furthermore, the claims recite that the super-stabilized nut

spread contains 1-4 added stabilizer. The amount of stabilizer in nut spread can vary from 1-5%; thus, a nut spread containing 5% stabilizer is considered to be super-stabilized in comparison to a nut spread containing 1% stabilizer. Thus, if the started nut spread contains 1% stabilizer and 1-4% additional stabilizer is added, then the nut spread contains 2-5% stabilizer. Thus, the nut spread in both Wong et al and Brabbs can be considered as super stabilize when 5% stabilizer is used versus when 1% stabilizer is used. In any event, it would have been obvious to increase the amount of stabilizer when one wants to increase the stabilization beyond the point that is normally found.

Applicant's arguments filed July 28, 2003 have been fully considered but they are not persuasive.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T Tran whose telephone number is 703-308-1868. The examiner can normally be reached on Tuesday, Wednesday and Friday. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

November 13, 2003


LIEN TRAN
PRIMARY EXAMINER
group 1761